IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

CRL.A.No. 1184 of 2004()

SC.138/2003 of ADDL.SESSIONS COURT (ADHOC)-II, KOTTAYAM
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APPELLANT:

RAMACHANDRAN, S/O.BHASKARAN,
C.NO.7932, C.P.TRIVANDRUM-695 012.

BY ADV. SRI.SAJEEV.T.P.

RESPONDENT:

STATE OF KERALA,
REP. BY A PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.K.C. SANTHOSHKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

J.B.KOSHY & K.HEMA, JJ.

Crl.A.NO.1184 OF 2004 ()

Dated this the 7th day of November, 2007

J U D G M E N T

KOSHY,J.

Appellant accused was convicted for the offences punishable under Sections 302 and 307 of the Indian Penal Code for committing murder of his mother and inflicting serious injuries likely to cause death on the sister-in-law on 5.7.1992 at about 4 p.m. Nine month year old baby of PW2 was also injured. Against the conviction and sentence, appellant accused filed this appeal.

2. PW1 son of the deceased Kamalakshi (younger brother of the accused) has given Ext.P1 F.I.Statement to the police. He is not an eye witness to the incident. On hearing about the incident, he rushed to the place and found the dead body of his mother in the road in front of his house. He was also informed that PW2 and her baby was taken to the hospital. He went to

the Police station and on the same day itself by 7.15 p.m. F.I.Statement was given. In Ext.P1 F.I.Statement, essential details and the name of the accused were mentioned. PW2 is the injured. She suffered serious injuries in the incident. She deposed that accused is the elder brother of her husband. She along with her husband (PW3), husband's mother (deceased) and nine month old child were residing in the family house. Accused is the elder brother of her husband (PW3). On 5.7.2002 at about 4 p.m in the evening the incident occurred. Her husband had gone for purchasing provision and at that time, she, deceased and the child were sitting in the varandah of their house. At that time, accused came there with a hatchet on his shoulder and asked whether they will give evidence against him, and unless the case is settled, he will kill PW2 and others. Hearing this, she was afraid and she ran to the adjacent road with the child. Accused came behind and inflicted by the hatchet on the left side of her chin, head and right shoulder. The baby who was carried on the hip of PW2, had also sustained cut injury to his right hand with the hatchet. Kamalakshi came to that place running and she prevented the

accused from attacking PW2. Then the accused caught hold of the hairs on the head of Kamalakshi saying that he would kill her and he delivered blow with the hatchet causing a cut injury to the back of the neck of Kamalakshi. The accused again delivered a blow with the same weapon on the shoulder of Kamalakshi. So, Kamalakshi fell into the ground. PW2 who was afraid, cried aloud and she rushed to the neighbouring house of PW10 and she disclosed the incident to PW10. Hearing the cry of PW2, the people residing in the vicinity of the house of PW10 gathered at the house of PW10. They took her to the junction for taking her to hospital. By the time her husband PW3 arrived. She narrated the incident to him. He took PW2 and the baby to Kanjirappally Govt. Hospital in a van, from where PW2 was later taken to the Medical College Hospital. Accordingly, PW2 was admitted to the Medical College Hospital and the baby was admitted to the children's hospital situated near the Medical College Hospital. The accused who is a wood cutter used to make dispute over the family property saying that he got only less share in the family property. The accused set fire to the family house one year before the incident

involved in this case. A case was pending in the Kanjirappally Magistrate Court in respect of the incident of setting fire to the house. The accused in this case was also the accused in that case. PWs.2 and 3 and deceased Kamalakshi testified in that case against the accused on 2.7.1992. As they had given evidence against the accused he harboured enmity and grudge against them. The accused had told the people in the locality that he would kill PW2 and others. At the time of the incident, PW2 was wearing MO1 nighty and the baby was wearing MO2 shirt. Kamalakshi was wearing MO3 lunki and MO4 blouse at the time of the incident. MOs.5 and 6 are the underskirt and brassier of Kamalakshi. She was examined on 23.7.2003 after 10 years of the incident as the accused who was absconding surrendered only on 19.5.2003. Though yet than a village witness, she was able to remember the horrible experience she had and deposed in terms of the prosecution case. Even though she was cross examined exhaustively she was able to withstand the cross examination.

3. In 313 statement defence of the accused was that PW2 and her husband (PW3) were quarrelling with the mother regarding the property partition and they used to quarrel and mother inflicted injury on PW2 and then after getting injury she went to her house took some weapon and inflicted injury on the mother and thus mother died. But no such suggestions were put to PW1 who gave Ext.P1 statement. Evidence of PW2 is supported by the medical evidence. In this connection we refer to the wound certificate Ext.P11. The injuries suffered were mentioned as follows:

> 1. Incised Bone deep injury left parotid region with left mandible being cut 4 x 2 cms. involving the oral mucosa also.
>
> 2. Incised scalp deep injury right parietal region 2 x 0.5 cms.
>
> 3. Incised skin deep injury posterior aspect of right shoulder 9 x 0.5 cms., and
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> 4. Contusion right forearm.

Ext.P11 was issued by Dr.K.T.Raju, the Lecturer in Surgery, Medical College Hospital, Kottayam. Witnesses were examined

only after 12 years of the incident. At the time of examination, he was abroad and was not available and PW15 another doctor working in the Surgery Department of Medical College Hospital, Kottayam. He identified the signature of Dr.K.T. Raju with the help of specimen signature book kept in the Surgery Department. PW15 identified the signature in Ext.P1. PW15 stated that the injury is sufficient in the ordinary course to cause death. Only due to expert treatment, she escaped from death. The history and alleged cause of injury were shown in Ext.P11, that is, after 4'0 clock the husband's brother put a cut injury by hatchet.

During cross examination of PW2, Ext.D1 161 statement was marked. There is no difference in the material part and evidence given by her in the court. Ext.D1 police statement which is marked at the instance of the accused to prove contradictions only support the case of the prosecution that the accused himself inflicted injury and there is no substantial

difference between Ext.P1 and D1. Earliest statement by the Doctor also is to the same fact as can be seen from Ext.P11 certificate.

4. PW7 conducted post mortem examination and Ext.P5 is the post mortem certificate. The injuries (ante-mortem) mentioned in Ext.P5 are the following:

> 1. Incised punctured wound 4.3 cm long horizontally placed on the back of neck, just above the spine of 7th cervical vertebra 3 cm. long portion of the wound was on the right side of midline and the rest on the left side. Both ends of the wound were sharp. The wound was directed forwards and slightly upwards for a depth of 6.5 cm. to transact the disc between the 6yh and 7th cervical vertebra, the spinal cord at that level and the right vertebral artery. The retropharyngial space was infiltrated with blood, but the oesophagus was not injured.
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> 2. In incised punctured wound, with bevelling of the upper edge, 4.3 cm. long, obliquely placed on the tip of left shoulder 2 cm. outer to the clavicle. Both ends of the wound were sharp. The wound was directed downwards and to the right for a depth of 6 cm. to cut the outer end of clavicle and corocoid process partially to terminate on the scapula.

He also deposed that his opinion as to the cause of death is

that deceased died of injury No.1 in Ext.P5. According to PW7, the two injuries mentioned in Ext.P5 could be produced with a hatchet and injury No.1 is sufficient court of nature to cause death. He also deposed that stab wound and punctured wound are same. He further deposed that injury No.1 was a horizontal wound placed on the back of the neck. Injury No.2 was obliquely placed on the left shoulder. The shape of the injury depends on the location of the body where the weapon strikes and also the force with which the weapon was used. His evidence shows that injury can be caused by hatchet. In this case, it was argued that PW2 is the only witness who has seen the incident. But it is not the quantity of the evidence that matters but it is the quality of the evidence that matters. Law does not require plurality of evidence and on the gesture of a single witness court can base conviction, if the witness is fully reliable. Evidence has to be weighed and not to be counted as held in ***Jose v. State of Kerala (AIR 1973 SC 944)***. Evidence of PW2 shows that she is a trustworthy witness. It is true that she is a village woman who deposed after 10 years of incident. But she was seriously injured in the

incident and she can never forget the event as she faced death. Immediately she went to the neighbouring house and told the incident when neighbours gathered. Neighbours Pws.4, 5 and 10 were also examined. Their evidence corroborated the evidence of PW2 even though they have not seen the incident. She deposed that she knows deceased Kamalakshi, the accused and PW2. The houses of PWs.2 and 10 are situated on either side of a small canal. If a loud voice is made at the house of PW10, the same could be heard in the house of PW2. The said small canal is passing across the road. The people in the locality are travelling on the road crossing the small canal. PW2 who had sustained cut injuries, along with her baby came to the house of PW10 running between 4 p.m. and 5 p.m. The baby had also sustained injury. PW2 unfolded that the accused inflicted cut injuries on PW2, Kamalakshi and the baby. Subsequently, PW2 was taken to the hospital from the house of PW10. PW10 had also accompanied PW2. But by the time her husband (PW3) came and he has taken the injured to the hospital. Her evidence also shows that the version given by PW2 is true. PW1 who gave the

F.I.Statement without delay also mentioned the name of the accused. Evidence of PWs.1 and 3 also prove the motive for the incident. The statement regarding the cause of injury and medical evidence fully support the evidence of PW2 and PW2 is a trustworthy witness and trial court who has seen the demeanor of the witness believed her. Incident started from the varandah of the house and apart from PW2, her nine month old baby was the only other person available at the place of incident. PW2 is a natural witness and there is material to doubt on behalf of her evidence. PW2 who is a seriously injured witness. In this connection, we refer to the decision of the Apex Court in ***Jayaram Shiva Tagore and others v. State of Maharashtra (AIR 1991 SC 1735)***.

It is argued that Ext.P11 wound certificate is not legally proved as Doctor who issued the same was not examined, even though it is an official record maintained in the Medical College Hospital in the official course of business. Even ignoring Ext.P11, the deposition of PW2 which is a trustworthy witness and which is corroborated by other evidence in this

case is enough to justify the conviction and sentence passed by the trial court. In the above circumstances, we see no ground to interfere in the conviction and sentence passed by the trial court, and hence this appeal is dismissed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

CRL.A.NO.1184 OF 2006 ()

J U D G M E N T

7th November, 2007